

### **REMARKS/ARGUMENTS**

Applicant hereby requests that finality of the rejection be withdrawn.

#### ***Claim Rejections – 35 USC §102 (with 103 in the alternative)***

The Office Action rejected claims 1-5, 9-12, 21-25, 35-38, and 41-43 under 35 USC §102(a & e) as being anticipated by or, in the alternative, under 35 USC 103(a) as being obvious over Mahan. In a reply filed May 28, 2010, Applicant provided evidence that conception coupled with diligence occurred prior to US Publication 2002/0068068. The Office Action stated that a 1.131 declaration should not have been used, but rather a priority showing under 37 CFR 41.202(d) should have been used.

The Mahan reference was abandoned in 2005, and there are no child or continuation applications that are currently pending. Therefore, establishing priority through 37 CFR 41.202(d) would be inappropriate at this juncture. As such, applicant respectfully requests that the rejection be withdrawn and that the declaration swearing behind Mahan be accepted to allow the Mahan reference to be removed from consideration.

### **CONCLUSION**

In view of the above, it is submitted that the claims and application are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance of the claims at an early date is solicited. Should the Examiner have any suggestions to place the application in even better condition for allowance or feel that issues may be best resolved by

Appl. No.: 10/541,246  
Amendment dated 9/3/2010  
Reply to Office Action of June 4, 2010

personal or telephonic interview, Applicant invites the Examiner to contact the undersigned representative at the number below.

Respectfully Submitted,  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC

Date: 9/3/2010

By: /Hemant Gupta/  
HEMANT GUPTA  
Reg. No. 58,717  
6075 Poplar Avenue, Suite 500  
Memphis, TN 38119  
(901) 680-7333